

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CARL M. MILLER

vs.

**NOTICE OF MOTION
TO VACATE DEFAULT
JUDGMENT
F.R.C.P. Rule 55**

Civil Action No. 17-cv-00928 LJV

COUNTY OF ERIE, *et al.*

Defendants

MOTION ON BEHALF OF:

Defendant MAXIM HEALTHCARE SERVICES, INC., by its attorneys, Colucci and Gallaher, PC.

**DATE, TIME AND PLACE
OF HEARING:**

Before the Hon. Lawrence J. Vilardo, United States District Court, Western District of New York, 2 Niagara Square, Buffalo, New York at a date and time to be determined by the Court.

SUPPORTING PAPERS:

Affidavit of Paul G. Joyce, Esq., dated May 3, 2018, with attached exhibits, and accompanying memorandum of law.

RELIEF DEMANDED:

An Order granting defendant MAXIM HEALTHCARE SERVICES, INC.'s motion to vacate the Clerk's Entry of Default (ECF Doc. No. 10), along with such other and further relief this Court deems just and proper.

**GROUND FOR RELIEF
DEMANDED:**

Fed. R. Civ. P. Rule 55(c)

PLEASE TAKE FURTHER NOTICE THAT that Defendant Maxim request oral argument on this matter and intends to file and serve reply papers.

Dated: Buffalo, New York **COLUCCI & GALLAHER, P.C.**
May 3, 2018

By: /s/ Paul G. Joyce
Paul G. Joyce
Attorneys for Defendant
MAXIM HEALTHCARE
SERVICES, INC.
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Phone: 858-2221
Attorney for Defendants:
The County of Erie, Department of
Sheriff of Erie County, Timothy B.
Howard, Erie County Sheriff, Thomas
Dina, Superintendent, Lieutenant
Krzysztof Kania, Sargent Christian J.
Sundberg, Officer Deanna J. Lates,
Lieutenant Karen A. Yetzer, Officer
Keith L. Roberts, Sargent Richard J.
Zozaczka, Officer D. Paul Robinson,
Officer Timothy M. Wanant, David
Julian, P.A. and Robert Gibbens, R.N.

Affirmation of Service

I hereby certify that on May 3, 2018, I electronically filed the foregoing Notice of Motion, supporting Affidavit and Memorandum of Law on behalf of Defendant Maxim Healthcare Services, Inc., Individually and d/b/a Maxim Staffing Solutions and Maxim Physician Resources with the Clerk of the District Court using its CM/ECF system, which would then electronically notify the following CM/ECF participants on this case:

Leonard D. Zaccagnino, Esq.
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The County of Erie, Department
of Sheriff of Erie County,
Timothy B. Howard, Erie County Sheriff,
Thomas Dina, Superintendent,
Lieutenant Krzysztof Kania,
Sargent Christian J. Sundberg,
Officer Deanna J. Lates,
Lieutenant Karen A. Yetzer,
Officer Keith L. Roberts,
Sargent Richard J. Zozaczka,
Officer D. Paul Robinson,
Officer Timothy M. Wanant,
David Julian, P.A. and Robert Gibbens, R.N.

I further certify that on the 3rd day of May, 2018, I served a copy of the foregoing Notice of Motion, supporting Affidavit and Memorandum of Law on behalf of Defendant Maxim Healthcare Services, Inc., Individually and d/b/a Maxim Staffing Solutions and Maxim Physician Resources via First Class Mail upon the following defendants:

Mr. James Thomas
clo Mid-State Correctional Facility
9005 Old River Road
P.O. Box 2500
Marcy, New York 13403

Mr. Ariel Simms
42 Kamper Avenue
Buffalo, New York 14210

Joseph Damico
clo Green Correctional Facility
165 Plank Road
Coxsackie, New York 12051

being the addresses designated for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the City of Buffalo, State of New York.

/s/ Paul G. Joyce

Paul G. Joyce, Esq.